IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.Rev.Pet.No. 481 of 1999()

CRMP.2824/1998 of JUDL.MAGISTRATE OF FIRST CLASS-I, PUNALUR
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REVN. PETITIONERS/ ACCUSED IN THE CRL.MP.
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1. **MATHEW, S/O. THOMAS, MELEKKALAYILVEEDU, CHEYATTUKUZHY, MOONGODU MURI, CHANNAPPETTA VILLAGE, KOLLAM DISTRICT.**

2. **SALI, W/O. JOY, MELEKKALAYILVEEDU, CHEYATTUKUZHY, MOONGODU MURI, CHANNAPETTA VILLAGE, KOLLAM DISTRICT.**

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS: COMPLAINANT AND STATE
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1. **KOSY, S/O. KOSY, R.B.HOUSE, PADINJATTATHIL, CHEYATTUKUZHY, MOONGODUMURI, CHANNAPPETTA VILLAGE, KOLLAM DISTRICT.**

2. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON 15/10/2007 PASSED THE FOLLOWING:

CRRP. NO.481/1999

ORDER ON CRL. MP. NO.2082/1999 IN CRL.RP. 481/1999

DISMISSED

15/10/2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

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CRL.R.P.NO. 481 OF 1999

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DATED THIS THE 15TH OCTOBER 2007

ORDER

The revision petitioners are the accused in the protest complaint filed by the first respondent in the Court of Judicial First Class Magistrate, Punalur alleging offences under Sections 326 and 307 read with Section 34 I.PC. It is pointed out that the police had registered crime No. 161/1996 against both the accused under Sections 324,326 read with Section 34 of the Indian penal Code. Later after investigation final report was filed only against the first petitioner for the offence under Section 326 I.P.C. It is subsequent to the same that the first respondent has filed the protest complaint arraying the second petitioner also an accused and incorporating Section 307 I.P.C. It is his grievance that the trial court without properly considering the facts involved took cognizance of the protest complaint under Section 307 I.P.C. as well. It is pointed out that it is on the basis of the F.I.S. rendered by the first respondent at the Medical College Hospital, Thiruvananthapuram on 20-12-1996 that Crime No.161/1996 was registered. It is pointed out that it is on the basis of the alleged

statement of the second petitioner/2nd accused, a lady that she called out as " '' (he is not dead) that the offence under Section 307 I.P.C. and against the 2nd petitioner the court has taken cognizance of the matter. According to the revision petitioner, the above statement incorporated in the protest complaint is only an embellishment and that the above exhortation is absent in the F.I.S. rendered by the first respondent vide Annexure-C. The police have filed the final report fully realising that the second petitioner is innocent in the matter. It is also pointed out that the police have registered Crime No. 162/1996 of Yeroor police station against the first respondent and three others for the offences punishable under Sections 447, 324, 427 read with Section 34 I.P.C. on the basis of the F.I.S. rendered by the first petitioner wherein it is alleged that on 19-12-1996 at about 7 p.m. the first respondent along with three others trespassed into the residential compound of the second petitioner and the first respondent hit him with a stone on the nose and others inflicted blows with sticks and pelted stones on the house of the 2nd petitioner causing damages to the tune of about Rs.5,000/-. The alleged motive is that the first respondent and others were in inimical terms with the first petitioner due to the reason that

the first petitioner spearheaded the installation of a new branch committee of the C.P.I. at the local place. Annexure-D is the scene mahazar prepared in both the crimes and Annexure-D would disclose that the police have recorded the damage to the house of the second petitioner and a charge sheet has been filed only against one Thomas Tharakan for the offence under Sections 324,447 and 427 I.P.C. It is also pointed out that the order of the court would result in gross prejudice to the petitioners as the court has came down heavily against the petitioners and foreclosed even the right of the petitioners to plead innocence.

2. On a perusal of impugned Annexure-B order of the court below, I find that the contention of the revision petitioners that the court has expressed quite damagingly as to the merits of the case and as to the nature of the injury sustained by the de facto complainant is well justified. The above order contains recitals to the effect that the act of the accused amounted to attempt to murder CW1 and that he has sustained grievous hurt to his skull and brain. Such types of expressions on merits has been depreciated by the top court (**Nagawwa** v. **Veeranna,** AIR 1976 SC 1947). It is pointed out that the statement of CW5, Doctor filed did not contain any statement

as to the nature of the injury whether it is fatal or not. In the circumstances, I find that the order of the court below requires reconsideration. Hence, Annexure-B order in Crl.M.P.No.2824/1998 is herewith set aside. The court below is directed to reconsider the matter afresh in the light of the existing sworn statements and the records produced by the complainant. The matter would stand posted before the court below on 12-11-2007. The Crl. revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P. NO. 481 of 1999

ORDER

15-10-2007